

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VINCENT J. PRATHER,

Plaintiff,

v.

GOVERNOR OF THE STATE OF
WASHINGTON; ATTORNEY
GENERAL OF THE STATE OF
WASHINGTON; BONNEY LAKE
MUNICIPAL COURT, BONNEY LAKE,
WA,

Defendant.

CASE NO. C12-5100BHS

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS

This matter comes before the Court on Defendants Governor of the State of Washington and Attorney General of the State of Washington's ("State Defendants") motion to dismiss. Dkt. 23. The State Defendants' motion seeks dismissal of all of Plaintiff Vincent J. Prather's ("Prather") claims alleged in his complaint. *Id.* Prather has failed to file a response to the motion.

Rule 7(b)(2) of the Local Rules states that "[i]f a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit." However, in considering a motion for summary judgment, the

1 motion should not be granted simply because there is no opposition, even if the failure to
2 oppose violates a local rule. *See Henry v. Gill Indus.*, 983 F.2d 943, 950 (9th Cir. 1993).
3 Rather, the moving party must demonstrate the absence of genuine issues of material fact,
4 regardless of whether the party against whom the motion for summary judgment is
5 directed has filed any opposition. *See Cristobal v. Siegel*, 26 F.3d 1488, 1491 (9th Cir.
6 1994). The Court applies the same analysis when a party fails to respond to a motion to
7 dismiss, in that the moving party must demonstrate why the plaintiff has failed to state a
8 claim in order for the motion to be granted.

9 On May 27, 2012, State Defendants filed a motion to dismiss in which they
10 demonstrate Prather's failure to state a claim upon which relief could be granted and
11 Prather has failed to file an opposition. Accordingly, the Court concludes that the State
12 Defendants' motion to dismiss should be granted.

13 The Court, having considered the pleadings filed in support of the motion and the
14 remainder of the file, does hereby find and **ORDER** that the State Defendants' motion to
15 dismiss (Dkt. 23) is **GRANTED** and the claims alleged in Prather's complaint are
16 **DISMISSED without prejudice**.

17 Dated this 2nd day of August 2012.

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20 BENJAMIN H. SETTLE
21 United States District Judge
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